RECENT CASES.

CONSPIRACY—OBVIOUS FRAUD—PEOPLE v. GILMAN, 80 N. W. 4 (Mich.).—In a prosecution for conspiracy to defraud the public by pretending to be a spiritualistic medium and give séances it was *held* to be immaterial that the evidence was obtained by a detective who paid his fee without being deceived by the imposture. The conspiracy was complete when formed.

In this case the court does not decide that all persons who claim to be mediums are impostors and liable to prosecution, for the facts proved of themselves that the defendant was not a bona fide spiritualist. It is hard to see on what grounds a court could pronounce spiritualism a humbug, provided the parties concerned actually believed in it. No court ought to dictate what a man shall hold as a religion or ethical tenet, nor should it pronounce any honest belief in these matters unworthy of a man of ordinary intelligence.

CONTRACTS—REFORMATION—EQUITY JURISDICTION—RAILWAY ADVERTISING CO. v. STANDARD ROCK CANDY CO., 60 N. Y. Sup. 228 (Supreme Court, Appellate Term).—Plaintiff sued in a municipal court on a contract providing that defendant should pay plaintiff $112.20 per month for placing defendants' advertising placards in the street cars of certain cities. It appeared that both parties agreed that the sum paid for such advertising should be the same as that paid under a former contract in another city, $102 per month, and that the larger sum appeared in the latter contract by mistake. The court instructed the jury that, if they found from the evidence that it was the understanding that defendant was to spend as much under the latter contract as under the earlier, they should find a verdict for plaintiff in the sum of $102 and interest. *Held*, "that the instruction did not assume the exercise of equity power, and virtually allow a reformation of the contract sued on and a recovery after reformation, and was not erroneous, when the parties had litigated the question as to what the contract was, without objection." MacLean, J., dissented from this opinion.

The charge to the jury and their subsequent finding would seem to be in error, because the defendant, by its answer set up no other contract than the one declared on in the complaint, for $112.20, nor did any other appear in the pleadings. The charge and finding seem to be a virtual assumption of equity powers, apparently recognizing the plaintiff's right of recovery upon the contract sued upon, but really reforming that contract because of a mutual mistake therein, and then allowing recovery on the reformed contract. This was extra jurisdiction. *Fenee* v. *Ellsworth*, (Com. Pl.) 19 N. Y. Sup. 659. Reformation is a purely equitable remedy, and it is hard to see how it can be granted in a case where a plaintiff does not ask for it, but sues in his common law rights under a contract, even if it be in a Code State.

"Even if it be not, in effect, reformation," says MacLean, J., "then it must be conceded to be a recovery upon a cause of action not pleaded, and we may say as was said in *Reed* v. *McConnell*, 133 N. Y. 433, 31 N. E. 22. 'This recovery was in violation of the rule that no judgment can be sustained in favor of a plaintiff on a cause of action not alleged in the complaint unless the defendant, by his silence or conduct, acquiesced in the trial of the new and different cause of action.'"

The majority of the court base their affirmance of the judgment, *first*, "upon the liberality, almost informality of practice sanctioned in the municipal court; *second*, upon the provisions of Section 3063 of the Code of Civil Procedure, and *third*, upon the fact that the parties had, without objection,

litigated the question as to what the contract was." Code Civ. Proc., § 3063, provides that the Appellate Court must render justice according to the justice of the case, and without regard to technical defects, which do not affect the merits, and that it may reverse or affirm a judgment for errors of law or fact. It is hard to see what application this has to the case under discussion, since there would be no injustice in compelling recourse to the remedy of reformation before bringing suit, and since it can hardly be regarded as a technical defect for suit to be brought on one cause of action and recovery had under another. The cogency of the third reason, namely, that the parties had been allowed to litigate what the contract really was, is not apparent. All the testimony on this point could only serve to show that there had been a mutual mistake as to the contract, that the real contract was something different from that which appeared in the written instrument, and that there was need of the equitable remedy of reformation.

EASEMENTS—RIGHTS OF MORTGAGEE—COMPENSATION—FERNIE v. CHICAGO, R. I. & P. Ry. Co., 58 Pac. 492 (Kansas).—A mortgagor of land granted the right of way to a railroad company without the consent of the mortgagee, and without any proceeding to condemn the land. *Held*, that a purchaser at a foreclosure sale under the mortgage or his grantee may sue the company for compensation, but cannot recover damages incident to the entry before he acquired title to the land.

This case seems to be correct on principle. *Perkins* v. *Pitts*, 11 Mass. 125, *Meriam* v. *Brown*, 128 Mass., 391, is an almost parallel case, holding as in the present case that the rails were real fixtures and became a part of the land. Although this is, without doubt, good law, there are decisions to the contrary. *Black River & Morristown Ry. Co.* v. *Barnard*, 16 N. Y. 104; *Cohen* v. *St. L., Ft. S. & W. Ry. Co.*, 34 Kan. 158.

EVIDENCE—REQUIRING PRODUCTION OF DOCUMENTS—IN RE COMINGORE, COLLECTOR, 96 FED. 552.—The reports made by a distiller, or by a storekeeper or other officers to a collector under the internal revenue laws are in no sense public records, and cannot be produced in court as evidence.

The question here hinges on the public nature of the storekeeper's report. If they are made "for the benefit of the public" (I Greenl., Sec. 483), it would seem that the State officials' call for them as evidence should be respected If they are the private property of the government, the Secretary of the Treasury has undoubtedly the right to order them refused as evidence. Their purpose is to give the collector information as to the quantity of distilled spirits in the warehouse, and they are not open to the public. But cases can be imagined where the public would be benefited by knowing such reports. There is nothing in them which the distiller has a right to demand should be secret, nor anything which can injure the public welfare or interest. And it has been held *In re Hirsch*, 74 Fed. 928, that a collector must give as evidence the application of a person for a license. The weight of authority, however, seems to be with the court in the present case. *In re Huttman*, 70 Fed. 699; *In re Weeks*, 82 Fed. 729.

EVIDENCE—WILLS—MENTAL CAPACITY—POWERS EX'R. ET AL. v. POWERS ET AL., 52 S. W. 845 (Ky.).—Evidence was offered as to the amount of property the testator had at a considerable time before his death and that he had a much less amount at his death. *Held*, that perhaps such evidence was admissible as showing the testator had not the mental capacity to make a will.

There seems to have been some doubt in the mind of the court as to the admissibility of this evidence and it is improbable that the decision will be anywhere followed. Such evidence is extremely remote from the issue and, by itself, of almost no effect, since the law has long been established that bad management or waste of an estate or want of understanding to transact even the ordinary business of life does not affect testamentary capacity. *Whitney* v. *Twombly*, 136 Mass. 145; *Hall* v. *Hall*, 17 Pick. (Mass.) 373.